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OFFICE OF PETITIONS

In re Application of	:	
Oliver Morgan, et al.	:	DECISION ON PETITION
Application No. 10/013,097	:	UNDER 37 CFR 1.78(a)(6)
Filed: December 6, 2001	:	
Attorney Docket No. A00023(2)	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed July 29, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional Application No. 60/254,039, filed December 7, 2000.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR § 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition under 37 CFR § 1.78(a)(6) must be accompanied by:

- (1) the reference to the prior filed provisional application supplied in an application data sheet (ADS) (37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(iii);
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

All the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 119(e) is accepted as being unintentionally delayed.

**The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the**

*prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.*

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Retta Williams at (571) 272-3229. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 2162 for appropriate action on the amendment submitted July 29, 2005, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/254,039.



Frances Hicks  
Petitions Examiner  
Office of Petitions

**ATTACHMENT:** Corrected Filing Receipt